



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 28, 1993

Mr. Jeff D. Hankins  
Legal Assistant, Regulated Lines Section  
Legal Services, 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR93-271

Dear Mr. Hankins:

The Department of Insurance received an application for information pursuant to the Open Records Act, V.T.C.S. By letter dated January 13, 1992, the applicant requested information about the selection of special deputy receivers<sup>1</sup> (hereinafter "SDR") and contracts between the receiver and other parties. You referred this matter to us by letter dated January 22, 1992, and we have assigned it ID# 14720.

The provisions applicable to the receiver and SDR are found in article 21.28 of the Insurance Code, which was amended, effective January 1, 1992. Acts 1991, 72d Leg., 2d C.S., ch. 12, §§ 1.07, 25.01. We will refer to a pre-amendment provision of article 21.28 as a "former" provision, and a post-amendment provision as the "current" provision.

You have made available to the requestor information he requested about the persons applying for or otherwise expressing interest in the position of SDR and you have informed him that you do not have a computer-generated list of the names, addresses, and telephone numbers of such persons. He also requests the following records:

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<sup>1</sup>Section 2(a) of article 21.28 of the Insurance Code, as amended effective January 1, 1992, Acts 1991, 72d Leg., 2d C.S., ch. 12, §§ 1.02, 25.01, authorizes the commissioner of insurance to contract with a person to serve as special deputy receiver for an insurer in receivership.

All contracts, agreements or extensions of agreements between the Liquidator or Receiver or the Commissioner of Insurance<sup>2</sup> and any person or entity, including attorneys and law firms, which were entered into from September 1, 1991 through the present, relating to the provision of administrative services, including claims-handling and litigation, to any and all receivership estates. This request is intended to include, without limitation, such documents relating to the provision of any services by persons or entities which may have been provided by staff attorneys employed by the Liquidation Division in connection with the administration of receivership estates.

(Footnote added.)

You state that there are no such items entered into by the liquidator or commissioner.<sup>3</sup> "As to any such item entered into by the Receiver, this information is in the possession of the court-appointed Receiver and is included in the records of many individual estates in receivership." You assert that the information consists of records of the judiciary, which are not subject to the act. You have submitted for our review information relating to a receivership established on September 16, 1991, pursuant to former article 21.28 of the Insurance Code.<sup>4</sup>

The act provides that "[a]ll information collected, assembled, or maintained by or for governmental bodies, . . . is public information" with certain exceptions. V.T.C.S. art. 6252-17a, §3(a). However, the judiciary is not a "governmental body" as defined by the act. *Id.*, § 2(1)(H); *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)(discussing purpose of section 2(1)(H)). Information "collected, assembled,

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<sup>2</sup>The requestor did not ask for any agreements entered into by the State Board of Insurance pursuant to the language of former article 21.28, section 12 of the Insurance Code, which was in effect until January 1, 1992. *See* Acts 1991, 72d Leg., 2d C.S., ch. 12, §§ 1.07, 25.01. Section 12(a) formerly provided that the State Board of Insurance had "the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary."

<sup>3</sup>You read the request letter as asking for only those contracts and agreements that pertain to the provision of administrative services to receivership estates. The request letter is not entirely clear, and it is possible that the requestor also seeks contracts in which the commissioner designates a person to be special deputy receiver. *See* Ins. Code art. 21.28, §2(a). We will defer addressing the contracts between the commissioner and a special deputy receiver until we receive clarification from you or from the requestor.

<sup>4</sup>*See* Application for Order Cancelling Policies of Insurance, Setting Claim Filing Deadline and Authorizing Payment of Claims in *State of Texas v. General Life & Accident Insurance Company*, No. 91-13023 (Dist. Ct. of Travis County, 250th Judicial Dist. of Texas, October 11, 1991) (stating that court entered Temporary Restraining Order and Order Appointing Temporary Receiver on September 16, 1991).

or maintained by or for" the judiciary is not subject to the act. Open Records Decision Nos. 610 (1992); 572 (1990); 411 (1984); 25 (1974).

In Open Records Decision No. 610, this office concluded that the receiver of an insurance company appointed by a court pursuant to article 21.28 of the Insurance Code, in either its former or current versions, holds the books and records of the company for the court. The insurer's books and records are records of the judiciary and thus not subject to the act.

In Open Records Decision No. 610, we did not address contracts entered into by the receiver relating to the provision of administrative services to the receivership estate. Since article 21.28 was first adopted in 1951, the court-appointed receiver has been authorized to conduct the insurer's business, subject to the direction of the court, and to sell or compound all claims owed by or owing to the insurer. Ins. Code art. 21.28, § 2(e),(g); *see* Acts 1951, 52nd Leg., ch. 491. The order appointing a permanent receiver in this receivership states as follows:

As provided by article 21.28, the Permanent Receiver is empowered to conduct the business of Defendant and to employ and authorize the compensation of any legal counsel, any accountants, clerks, and such assistants, as he deems necessary, and to authorize the payment of the administrative expenses of the receivership estate to be paid out of the funds or assets of the Defendant in the possession of the Permanent Receiver or coming into his possession.

Agreed Permanent Injunction and Order Appointing Permanent Receiver, *State of Texas v. General Life & Accident Insurance Company*, No. 91-13023 (Dist. Ct. of Travis County, 250th Judicial Dist. of Texas, Dec. 16, 1991).

The records you have submitted include a document on the policies relating to employment of counsel in effect during the time covered by this request. It states as follows:

Unless expressly stated otherwise, the firm or attorney is *being employed* by the *Receiver* of a particular estate and *not* by the State Board of Insurance.

S. DURISH, POLICIES REGARDING EMPLOYMENT OF OUTSIDE COUNSEL 1 (Nov. 1990) (Tex. State Bd. of Ins.).

The receiver enters into these contracts on behalf of the receivership, and not the state. *See* Attorney General Opinion WW-432 (1958) at 3 (attorneys appointed by State Board of Insurance to conduct litigation on behalf of receivership estate is not an agent of board *even though appointed by board*). The receiver is conducting the insurance

company's business, and therefore subject to court supervision when it contracts with such persons to perform services for the receivership estate. Ins. Code art. 21.28, § 2(e). Accordingly, we conclude that the receiver's contracts with other persons for administrative services to the receivership, are records of the receivership. They are records of the judiciary and not subject to the Open Records Act.

If you have any questions with regard to this letter, please contact this office.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SLG/MRC/le

Ref.: Open Records Decision No. 610

Enclosures: submitted documents

cc: Mr. John F. Hamje  
1700 One American Center  
600 Congress Avenue  
Austin, Texas 78701  
(w/o enclosure)